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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 02, 2017
85th Legislature, Number 61
The House convenes at 10 a.m.
Part Two

Sixty-nine bills are on the daily calendar for second-reading consideration today. The bills analyzed or digested in Part Two of today's *Daily Floor Report* are listed on the following page.



Dwayne Bohac
Chairman
85(R) - 61

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Tuesday, May 02, 2017

85th Legislature, Number 61

Part 2

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SUBJECT: Decreasing the fee for certain handgun license applications

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 8 ayes — P. King, Nevárez, Burns, Holland, J. Johnson, Metcalf, Schaefer, Wray

0 nays

1 absent — Hinojosa

WITNESSES: For — Rick Briscoe, Open Carry Texas; Jason Fullam, Security Officers Brotherhood; John-Michael Gillaspy, Texas Carry; Alice Tripp, Texas State Rifle Association; Terry Holcomb; (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Michael Cargill, Texans For Accountable Government; Michael Pacheco, Texas Farm Bureau; and nine individuals)

Against — (*Registered, but did not testify*: Elva Mendoza)

On — (*Registered, but did not testify*: RenEarl Bowie, Texas Department of Public Safety)

BACKGROUND: Government Code, 411.174 requires an applicant for a license to carry a handgun to submit a nonrefundable application and license fee of \$140 to the Department of Public Safety (DPS).

Sec. 411.185 requires DPS to set a renewal fee in an amount that is sufficient to cover the administrative costs to issue the renewed license. That fee currently is \$70.

Secs. 411.194 and 411.195 allow indigents and senior citizens to pay half of the normal fee for an original or renewed license, which would be \$70 and \$35, respectively.

Sec. 411.190 requires DPS to issue a license to any certified handgun

instructor who pays a fee of \$100, in addition to other costs.

Sec. 411.201 allows DPS to set an application fee for active and retired judicial officers in an amount that covers the administrative costs to issue the license.

DIGEST: CSHB 300 would reduce the fees associated with certain applications for a license to carry a handgun.

Original and renewed licenses. The bill would reduce the fee for the issuance of an original license from \$140 to \$40. The cost for a renewed license would be set at \$40, removing the requirement for the Department of Public Safety to determine this fee.

Indigents and senior citizens. Indigents and senior citizens would pay the normal fee of \$40 for the issuance of an original license. Their fees for the issuance of a renewed license would remain at \$35.

Certified handgun instructor. The fee for a certified handgun instructor would be decreased from \$100 to \$40.

Judicial officers. The fee for active and retired judicial officers would be set at \$25.

The bill would take effect September 1, 2017, and would apply only to a license application submitted on or after that date.

SUPPORTERS SAY: CSHB 300 would address concerns that the fees to apply for or renew a handgun license in Texas are too high and impose an undue burden on the constitutional right to bear arms as it relates to lawfully carrying a handgun. While today handgun fees in Texas are some of the highest in the country, this bill would place Texas among the states with the lowest fees.

The current \$140 fee exceeds the actual cost to administer the license-to-carry program. When the license was first established, the fee was set at a level estimated to support the cost of the program and was not intended to produce excess revenue. However, with changes in technology, the costs to the Department of Public Safety have decreased. The per-applicant cost

to the department currently is around \$27, which accounts for required background checks. The bill would adjust the fee to better reflect the actual costs of running the program, without resulting in a negative fiscal impact to the department.

Although the bill would have a cost to general revenue, it would take a necessary step to lessen the burden for eligible citizens who wish to become licensed to carry a handgun. While fee reductions currently are available to certain individuals, most eligible Texans are subject to the full fee. The bill would increase access to a handgun license for those eligible by making it no longer cost-prohibitive to carry legally in the state. Further, it is unfair to expect handgun licensees to fund other state services and programs.

**OPPONENTS
SAY:**

CSHB 300 would cost the state a significant amount of revenue during tight budgetary times. According to the Legislative Budget Board's fiscal note, the bill would result in an estimated loss of \$22 million in general revenue through fiscal 2019, a cost that would continue in future biennia. Given current fiscal conditions, the state cannot afford this loss of revenue.

**OTHER
OPPONENTS
SAY:**

CSHB 300 would not go far enough to eliminate the undue financial burden on Texans who wish to exercise their Second Amendment rights. The licensing and renewal fees should be eliminated for all eligible Texans.

NOTES:

According to the Legislative Budget Board, the bill would have an estimated negative impact of about \$22 million to general revenue related funds through fiscal 2018-19, with a similar impact in subsequent biennia.

The committee substitute differs from the bill as filed in several ways, including that CSHB 300 would reduce the fee for an original or renewed handgun license to \$40, rather than eliminating the fee altogether.

Companion. A companion bill, SB 16 by Nichols, was approved by the Senate on March 27 and reported favorably from the House Homeland Security and Public Safety Committee on April 20.

SUBJECT: Authorizing health benefit coverage for medication synchronization

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Sanford, Turner, Vo

0 nays

WITNESSES: For — Cam Scott, American Cancer Society Cancer Action Network; Chase Bearden, Coalition of Texans with Disabilities; Jessica Haskins, NACDS; Will Francis, National Association of Social Workers - Texas Chapter; (*Registered, but did not testify*: Blake Hutson, AARP Texas; David Gonzales, Alliance of Independent Pharmacies of Texas; Denise Rose, AstraZeneca; Reginald Smith, Communities for Recovery; Eric Woomer, Federation of Texas Psychiatry; Micah Rodriguez, HEB; Gyl Switzer, Mental Health America of Texas; Eric Kunish, National Alliance on Mental Illness Austin; Amber Pearce, Pfizer; John Heal, Pharmacy Buying Association d/b/a Texas TrueCare Pharmacies; Dan Hinkle, Texas Academy of Family Physicians; Stephanie Simpson, Texas Association of Manufacturers; Bradford Shields, Texas Federation of Drug Stores; Thomas Kowalski, Texas Healthcare and Bioscience Institute; Duane Galligher, Texas Independent Pharmacies Association; Steven Hays, Carolyn Parcells, and Clayton Stewart, Texas Medical Association; Erin Cusack, Texas Nurse Practitioners; Andrew Cates, Texas Nurses Association; Victor Gonzalez, Texas Ophthalmologic Associations; Rachael Reed, Texas Ophthalmological Association; Bobby Hillert and David Teuscher, Texas Orthopaedic Association; David Reynolds, Texas Osteopathic Medical Association; Clayton Travis, Texas Pediatric Society; Justin Hudman, Texas Pharmacy Association; Michael Wright, Texas Pharmacy Business Council; Carlos Higgins, Texas Silver Haired Legislature; Bonnie Bruce, Texas Society of Anesthesiologists; Greg Herzog, Texas Society of Gastroenterology, Texas Neurological Society; Kellie Duhr, Walmart; and seven individuals)

Against — (*Registered, but did not testify*: Wendy Wilson, Prime Therapeutics)

On — (*Registered, but did not testify*: Joe Matetich, OPIC; Pat Brewer, Texas Department of Insurance)

DIGEST:

CSHB 1296 would apply only to certain health benefit plans, as listed in the bill, that provide benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness. Under the bill, a health benefit plan would establish a process through which the plan, the enrollee, the prescribing physician or health care provider, and a pharmacist could jointly approve a medication synchronization plan for medication to treat an enrollee's chronic illness. The "medication synchronization plan" would synchronize the filling or refilling of multiple prescriptions. A health benefit plan would provide coverage for medications dispensed according to a medication synchronization plan.

CSHB 1296 would apply to a medication that:

- was covered by the enrollee's health plan;
- met the prior authorization criteria specifically applicable to the medication under the health benefit plan on the date the request for synchronization was made;
- was used for treatment and management of a chronic illness, as defined in the bill;
- could be prescribed with refills;
- was a formulation that could be effectively dispensed with the bill's specified medication synchronization plan; and
- was not a schedule II controlled substance or a schedule III controlled substance containing hydrocodone.

The bill would define a "chronic illness" to mean an illness or physical condition that could reasonably be expected to continue for an uninterrupted period of at least three months and that could be controlled but not cured by medical treatment.

A health benefit plan would establish a process for a pharmacist or pharmacy to override the plan's denial of coverage for a medication under an enrollee's medication synchronization plan. The health plan would

allow a pharmacist or pharmacy to override a denial and the plan to cover the medication if:

- the prescription for the medication was being refilled in accordance with the medication synchronization plan; and
- the reason for the denial was that the prescription was being refilled before the date established by the plan's general prescription refill guidelines.

CSHB 1296 would require any health benefit plan that provided prescription drug benefits to prorate any cost-sharing amount charged for a partial supply of a prescription drug if the pharmacy, the enrollee's prescribing physician, or the enrollee's health care provider notified the health benefit plan that:

- the quantity dispensed was to synchronize the dates that the pharmacy dispensed the enrollee's prescription drugs;
- the synchronization of the dates was in the best interest of the enrollee; and
- the enrollee agreed to the synchronization.

A "cost-sharing amount" would include a deductible, coinsurance, or copayment. The prorating would be based on the number of days' supply that was actually dispensed, and a health benefit plan could not prorate the fee paid to the pharmacy for dispensing the drug.

CSHB 1296 would take effect September 1, 2017, and would apply only to a health benefit plan that was delivered, issued for delivery, or renewed on or after January 1, 2018.

**SUPPORTERS
SAY:**

CSHB 1296 would synchronize refill dates for certain medications for patients with a chronic illness, allowing these patients to pick up all their prescriptions together on the same date. This benefit already is covered by Medicare part D and is offered in many other states. The bill would apply only to prescriptions for a chronic illness that needed to be dispensed at the same time and that were formulated to be effectively dispensed with a medication synchronization plan. It would not apply to controlled

substances in schedules II or III, including those containing hydrocodone.

Studies have found that poor medication adherence costs the U.S. health care system billions annually. CSHB 1296 would reduce costs for health plans and patients by increasing medication adherence and making it easier for patients to pick up their prescriptions together on one date. Medication synchronization is especially important for patients undergoing cancer treatment or those with a chronic illness who have difficulty traveling to a pharmacy.

CSHB 1296 would apply only to medications that met a health benefit plan's specific prior authorization criteria and would not require plans to cover new products, offer new pharmaceutical benefits, or cover drugs outside of a plan's existing preferred drug list. Plans could establish their own process for implementing the bill.

It is common sense to allow a prorated copay for a prescription that was not fully filled because it was being synchronized with other medications. Patients should not have to pay a full copay for a few days of a medication that was meant to be taken for a month or longer. Without prorated copays, full dispensing fees, and the ability to override denial codes, synchronization is not realistic.

Drug synchronization lowers costs for health plans and patients by helping patients stay healthier and reducing expensive hospital admissions caused by poor medication adherence. According to the fiscal note, there would be no cost to state-administered health benefit plans to implement CSHB 1296.

**OPPONENTS
SAY:**

By requiring insurers to offer medication synchronization as a benefit, as well as prorated copays for certain medications, CSHB 1296 could increase health insurance costs that could be passed on to patients.

NOTES:

A companion bill, SB 697 by Buckingham, was approved by the Senate on April 18.

SUBJECT: Review, oversight, and reporting of certain state agency contracts

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 20 ayes — Zerwas, Longoria, Ashby, Capriglione, Cospers, S. Davis, Dean, Gonzales, Howard, Koop, Perez, Phelan, Raney, Roberts, J. Rodriguez, Sheffield, Simmons, VanDeaver, Walle, Wu

0 nays

7 absent — G. Bonnen, Dukes, Giddings, González, Miller, Muñoz, Rose

WITNESSES: For — (*Registered, but did not testify*: Terri Hall, Texas TURF)

Against — (*Registered, but did not testify*: Caroline Joiner, TechNet)

On — (*Registered, but did not testify*: Amy Comeaux, Bobby Pounds, Jette Withers, and Robert Wood, Comptroller of Public Accounts; Ron Pigott, Health and Human Services Commission; John Montgomery and Jacob Pugh, Legislative Budget Board)

BACKGROUND: Government Code, sec. 322.020 requires state agencies to provide the Legislative Budget Board (LBB) with copies of certain major contracts and related information. The LBB is required to post on the internet information about the contracts in a major contracts database. The section defines major contracts as certain contracts on information services, building and construction, professional services, and consulting services and certain other contracts with values exceeding \$50,000.

Several sections of the Government Code require state agencies and institutions of higher education to report to the LBB information about contracts. Government Code, sec. 2054.008 requires state agencies and university systems to provide notice to the LBB about certain contracts for major information systems. Sec. 2254.006 requires state agencies and institutions of higher education to notify the LBB of contracts relating to certain professional services. Sec. 2254.0301 requires state agencies to report to the LBB certain consulting services. Sec. 2166.2551 requires

state agencies to provide notice to the LBB of certain construction projects.

Government Code, ch. 2262 governs statewide contract management. Sec. 2262.101 creates the state's contract advisory team to assist state agencies in improving contract management practices. The team reviews solicitation documents and contract documents for contracts of at least \$10 million and reviews finding or recommendations from the state auditor about an agency's compliance with the state's contract management guide. The six-member team is composed of representatives from certain state agencies and the offices of the comptroller and the governor. Government Code, sec. 2262.051 governs the development of a contract management guide for state agencies and requires agencies to comply with it.

Government Code, sec. 2054.158 requires the state auditor, the LBB, and the Department of Information Resources to create a quality assurance team. The team's responsibilities include developing and recommending policies and procedures to improve state agency information resources technology projects.

DIGEST: CSHB 20 would revise statutes relating to contract reporting and contract monitoring.

Contract reporting. The bill would amend the definition of "contract" in Government Code, sec. 322.020 that identifies the types of contracts that must be reported to the Legislative Budget Board (LBB) for the contract database. It would eliminate current references to contracts for specific types of goods or services and to contracts exceeding \$50,000. Instead, the definition for a contract that must be reported would be a contract, grant, or agreement for the purchase or sale of goods and services entered into or paid for by a state agency or an amendment, modification, renewal, or extension of the contract, grant, or agreement.

Reporting provisions would apply to all state agencies and to contracts that exceed \$50,000, other than a contract of an institution of higher education that is paid for solely with institutional funds or hospital and clinic fees, or is for sponsored research. It also would apply to major consulting contracts, defined as a consulting services contract over

\$15,000, or \$25,000 for an institution of higher education other than a public junior college.

The bill would establish requirements for reporting contracts and modifications to the LBB. Within 30 days of awarding or modifying a contract, state agencies would have to provide written notice to the LBB and provide it with copies of certain documents, including the contract and modifications and solicitations related to the contracts. These requirements would not apply to certain Texas Department of Transportation contracts, including ones for highway construction or engineering, or to Medicaid provider enrollment contracts. Agencies would be able to redact from these documents certain information made confidential under the state's Public Information Act.

Institutions of higher education would have to report to the LBB certain contracts paid with appropriated funds, including certain major information system that exceed \$1 million, construction projects exceeding \$50,000, and professional services exceeding \$50,000.

The LBB would continue to be required to post on the internet copies of each contract.

Contract oversight. The bill would authorize the LBB to review contracts, report on violations, and establish corrective plans. The LBB would be able to review contracts for compliance with the state's contract management guide, the comptroller's procurement policy manuals, and contracting laws, policies, and procedures. This would not apply to institutions of higher education contracts paid for solely with institutional funds or hospital or clinic fees.

The LBB would be required to notify agencies of violations, and agencies would have to 10 days to respond to such a notice. If the LBB determined that a response did not adequately address or resolve a violation, the LBB director could notify the LBB, the agency, the comptroller, and the governor. CSHB 20 would establish what the notice would be required to contain, including potential remedies for the violation and any enforcement mechanism that may be assessed under provisions established by the bill. State agencies would be required to develop a

written, corrective plan within 30 days of receiving the notice.

The bill would authorize the LBB to take certain enforcement actions against state agencies found to be in violation of the state's contract management guide, the comptroller's procurement policy manuals, and contracting laws, policies, and procedures. The LBB could establish a schedule of enforcement mechanisms that could be taken against state agencies, including enhanced monitoring, consultations, audits, and recommended cancellations. The LBB director could recommend to the LBB an enforcement mechanism for contract violations. The LBB could increase the severity of enforcement mechanisms for repeat violations or dismiss them after successfully implementing corrective actions.

CSHB 20 would require state agencies to post on their websites a link to the LBB's contracts database. The bill would eliminate a current requirement that state agencies post on their websites a list of their contracts and certain information about them. The bill also would establish requirements for institutions of higher education to post on their websites certain information about contracts of more than \$15,000 if paid with institutional funds or hospital and clinic fees.

The bill would require the contract advisory team to give the LBB a copy of certain recommendations the team makes about solicitation and contract documents for contracts of at least \$10 million and agency responses to the recommendations.

The bill would take effect September 1, 2017, and would apply to contracts entered into or amended, modified, renewed, or extended on or after that date.

**SUPPORTERS
SAY:**

CSHB 20 would simplify and consolidate requirements for contract reporting for state agencies and higher education institutions. This would reduce confusion over the requirements, make compliance easier, and increase transparency. The bill also would improve monitoring of contracts, which would help agencies comply with best practices and state laws and policies. These changes would help the state better manage its contracts and help mitigate contract risk. Many of the issues that CSHB

20 would resolve were identified in the Legislative Budget Board's (LBB) *January 2017 Staff Reports*.

Contract reporting. The bill would address confusion about what kind of contracts must be reported to the LBB for its existing contract database. There are several reporting requirements about specific types of contracts scattered throughout the Government Code, and there are reporting requirements in the general appropriations act. It can be difficult for agencies to follow the requirements due to different reporting thresholds, conflicting reporting time frames, and numerous exemptions.

The bill would reduce confusion by broadening the definition of contracts that must be reported to the LBB to include all major types of state purchases and to harmonize information with the general appropriations act. The bill would eliminate reporting requirements about specific types of contracts in favor of a general requirement that would apply to all major contracts. The bill would address confusion about reporting time frames by instituting a 30-day, uniform requirement.

CSHB 20 also would revise requirements for posting contracting information on the internet by eliminating a requirement that individual agencies post information on their sites. Compliance with this requirement has varied, and it has led to some duplication of efforts or incomplete posting of information. The bill would simplify this requirement across the state by requiring all information to be sent to the LBB and having agencies post a link to the LBB-maintained contract database. This would consolidate the information into one database while maintaining transparency and public access.

Contract oversight. CSHB 20 would address fragmented and limited oversight of state contracts and difficulties in implementing oversight findings. For example, not all contracts are reviewed before important dates, not all oversight recommendations are followed, and agencies do not consistently use best practices. In addition, oversight entities are specialized and oversight findings are not followed because they are non-binding. The bill would fill these gaps and improve the enforcement of existing contracting requirements.

The bill would address these issues by codifying the LBB's existing authority to review contracts, which currently is in the general appropriations act. This would ensure these reviews remained an ongoing responsibility and would be based on existing authority. The bill would establish a process for the LBB to work with agencies that were in violation of contracting guides, manuals, laws, and policies. The bill would facilitate communications about contracting issues among the LBB, state agencies, the comptroller, and the governor. This would help ensure that oversight findings and best practices were implemented and that corrective actions were taken when necessary.

CSHB 20 would address issues with the flow of information about contracts by requiring the state's existing Contract Advisory Team to give the LBB copies of its reviews and agency responses. Currently, the team's findings are not always being implemented, so this information exchange would allow the LBB to monitor these situations.

The LBB would be the correct entity for these tasks. The board is composed of elected officials who have responsibility for many of the state's fiscal policies, and contracting is a large part of the state's budget. The LBB staff has budget expertise in all state programs, experience monitoring fiscal matters, and has been keeping information on state contracts since 1999. CSHB 20 would codify and simplify current practices based on existing authority, not create any new bureaucracy.

**OPPONENTS
SAY:**

The Legislative Budget Board may not be the best entity to take on an expanded role in contract monitoring. A better approach might be to establish a chief procurement officer for the state with authority over all contracts. This could allow the consolidation of monitoring and compliance in one easily identifiable executive branch entity that could focus on this one issue.

SUBJECT: Allowing magistrates to set bail on violations of community supervision

COMMITTEE: Corrections — favorable, without amendment

VOTE: 6 ayes — White, Allen, S. Davis, Romero, Sanford, Tinderholt
1 nay — Schaefer

WITNESSES: For — Michael Haugen, Texas Public Policy Foundation; (*Registered, but did not testify*: Nicholas Hudson, American Civil Liberties Union of Texas; Melissa Shannon, County of Bexar Commissioners Court; Mary Mergler, Texas Appleseed; Andrea Keilen, Texas Criminal Defense Lawyers Association; Douglas Smith, Texas Criminal Justice Coalition; Rebecca Bernhardt, Texas Fair Defense Project)

Against — None

On — (*Registered, but did not testify*: Carey Welebob, Texas Department of Criminal Justice)

BACKGROUND: Under Code of Criminal Procedure, art. 42A.751(b), when criminal defendants who are on probation are accused of violating a condition of their probation, judges can issue warrants for their arrest. Arrested defendants can be detained in a county jail until they can be taken before a judge for a determination about the alleged violation.

Art. 42A.751(c) requires that within 48 hours of being arrested the defendant be taken before the judge who ordered the arrest or, if the judge is unavailable, before a magistrate. The judge or magistrate must perform the duties required under Code of Criminal Procedure, art. 15.17, which include informing the accused of certain rights and providing other information, except that only the judge who ordered the arrest can authorize the defendant's release on bail.

DIGEST: HB 664 would allow magistrates, as well as judges, to release on bail defendants accused of violating a term of their community supervision.

The bill would take effect September 1, 2017, and would apply to those arrested on or after that date.

**SUPPORTERS
SAY:**

HB 664 would give local magistrates and judges more flexibility in handling cases in which a probationer was arrested for violating a condition of probation. The bill would increase jail efficiency by allowing magistrates to set bail after an arrest for a probation violation so that probationers did not languish in jail unnecessarily and so that resources were preserved for the most serious cases.

An arrest warrant for violating probation can relate to committing a new offense or violating a condition of probation. Currently, only the judge who ordered that a probationer be arrested for a probation violation may set a bail after such an arrest. Magistrates, who may perform numerous other functions in the case, are excluded from this one task. In some cases, the judge may be unavailable, meaning that the probationer remains in jail for a low-level offense waiting on the original court, with no option to bond out. Some jails are overcrowded and need all available space for those accused of serious crimes.

Magistrates would have adequate information in the case to make an informed decision. If the same person were arrested for a new crime, instead of a probation violation, the magistrate could set bail. It would be reasonable to extend this same authority to the probation violation.

**OPPONENTS
SAY:**

Current law properly places the authority to set bail for someone accused of a probation violation with the judge who issued the arrest warrant. This judge would be in the best position to make an informed decision in these situations because the judge would be familiar with a defendant's case, background, and circumstances.

**OTHER
OPPONENTS
SAY:**

The authority that HB 664 would give to magistrates should be limited to low-level offenders, such as those on probation for misdemeanors, and for arrests for low-level, non-violent crimes. In such cases, everything a magistrate needed to make a fully informed decision would be available.

NOTES:

The author plans to offer a floor amendment that would limit the ability of magistrates to release defendants arrested for probation violations on bail

to certain types of defendants and arrests. The proposed amendment would allow magistrates in counties in which a defendant was arrested for alleged probation violations to release the defendant on bail if:

- the defendant was on probation for a misdemeanor offense;
- the alleged violation of probation involved only a non-violent misdemeanor; and
- the arrest took place in the same county in which the defendant was under probation.

SUBJECT: Insurance requirements for certain nonemergency medical transportation

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Sanford, Turner, Vo

0 nays

WITNESSES: For — (*Registered, but did not testify*: Joe Woods, Property Casualty Insurers Association of America; Amanda Martin, Texas Association of Business; Jamie Dudensing, Texas Association of Health Plans; Bryan Hebert, Veyo Logistics)

Against — (*Registered, but did not testify*: Christine Ybarra, Association of Community Transit of Texas)

On — (*Registered, but did not testify*: Jami Snyder, Health and Human Services Commission; Marianne Baker, Texas Department of Insurance)

BACKGROUND: In 2015, HB 1733 by Smithee created Insurance Code, ch. 1954, which lays out insurance requirements for transportation network companies (TNCs). Specifically, sec. 1954.052 requires either the TNC or the TNC driver to maintain automobile insurance in excess of normal requirements when a driver is logged in but not engaged in a prearranged ride.

The definition of "transportation network company" in sec. 1954.001 explicitly excludes an entity arranging nonemergency medical transportation (NEMT) under a contract with the state or a managed care organization for Medicaid or Medicare recipients. Some observers have noted that this exclusion impacts some NEMTs that operate on the TNC business model, creating a gap period between insurance coverages when a driver is logged on to the network but not yet engaged in a ride.

DIGEST: CSHB 2501 would remove from the definition of transportation network company language excluding an entity providing nonemergency medical transportation (NEMT) under a contract with the state or a managed care

organization for Medicaid or Medicare recipients.

Instead, the bill would provide that the insurance requirements did not apply to such an entity arranging NEMT unless the entity:

- connected riders and drivers through a digital network;
- contracted individually with each driver; and
- otherwise met all requirements under the Medicaid or Medicare program for delivery of NEMT services.

The bill would take effect September 1, 2017.

NOTES:

A companion bill, SB 2222 by Creighton, was referred to the Senate Committee on Business and Commerce on March 29.

SUBJECT: Continuing the Texas Board of Nursing

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Price, Sheffield, Arévalo, Burkett, Coleman, Cortez, Guerra, Klick, Oliverson, Zedler

0 nays

1 absent — Collier

WITNESSES: For — Jennifer Gentry and Mary Lee Pollard, Excelsior College; Kathryn Tart, Texas Deans and Directors of Professional Nursing Programs; Cindy Zolnierek, Texas Nurses Association; Pat Recek; Debora Simmons; (*Registered, but did not testify*: Wendy Wilson, Consortium of Certified Nurse-Midwives; Andrew Cates, Nursing Legislative Agenda Coalition; Carrie Kroll, Texas Hospital Association; Erin Cusack and Casey Haney, Texas Nurse Practitioners)

Against — None

On — Katherine Thomas, Texas Board of Nursing; Skylar Wilk, Texas Sunset Advisory Commission; (*Registered, but did not testify*: Kristin Benton, James (Dusty) Johnston, and Mark Majek, Texas Board of Nursing)

BACKGROUND: The Texas Board of Nursing was established to protect public health and safety by regulating nurses and nursing education programs in Texas. To achieve its mission, the board:

- issues licenses for vocational nurses (LVNs), registered nurses (RNs), and advanced practice registered nurses (APRNs);
- approves and regulates pre-licensure nursing education programs;
- enforces statute and board rules by investigating and resolving complaints against nurses; and
- offers a peer assistance program for nurses who are impaired.

Governing structure. The board is composed of 13 members: four public members, three LVNs, two RNs, one APRN, one member representing LVN education programs, one member representing bachelor's degree in nursing education programs, and one member representing associate's degree in nursing education programs.

Staffing. In fiscal 2015, 117 staff were employed by the board.

Funding. For fiscal 2015, the board received appropriations of about \$11.4 million. In fiscal 2016, the board collected more than \$17.7 million in fees, including \$7.3 million in license renewal fees.

The board would be discontinued on September 1, 2017, unless continued in statute.

DIGEST: CSHB 2950 would continue the Texas Board of Nursing (BON) until September 1, 2029.

Out-of-state nursing programs. The bill would require the board by rule to develop a pathway to initial licensure for graduates of out-of-state programs that were not substantially equivalent to Texas programs.

Out-of-state clinical competency assessment programs that graduated students who passed the National Council Licensure Examination (NCLEX) for Registered Nurses at a lower rate than the board's required passage rate for graduating students of approved in-state programs would have to take certain actions that corresponded to the number of consecutive years an out-of-state program's passage rate was below the board's required passage rate. Certain actions by these out-of-state programs would include submitting a self-study of their programs to the board, allowing the board to evaluate and make recommendations to improve the program through a desk review, and providing notice on their website that future students may need to meet additional requirements for initial licensure in Texas.

By May 31, 2018, the board would have to adopt rules on the bill's provisions related to out-of-state nursing programs. The bill's provisions would apply to out-of-state program passage rates that were available

beginning in January 2018.

Sanctions. The bill would update definitions of unprofessional conduct and good professional character and would direct the BON to adopt rules ensuring license denials and disciplinary action were limited to the practice of nursing. The board would have to adopt rules to reflect these changes by March 1, 2018.

Nurse licensure compact. The bill would update the current Nurse Licensure Compact administered by the board, which allows nurses licensed by their home state to practice in other states participating in the compact without obtaining a separate license.

The new Nurse Licensure Compact would differ from the current compact in numerous ways, including by:

- requiring fingerprint or other biometric-based background checks for all new nurses obtaining a compact license;
- prohibiting nurses with felony convictions from obtaining a compact license;
- establishing the Interstate Commission of Nurse Licensure Compact Administrators and delineating membership, powers, and financing;
- requiring the commission to prescribe rules or bylaws governing its conduct as needed to carry out the purposes of the compact;
- directing each state to enforce the compact; and
- establishing dispute resolutions and state termination procedures.

The new Nurse Licensure Compact would take effect on the earlier date of when 26 states have enacted the compact or December 31, 2018. The bill would repeal certain provisions of the current Nurse Licensure Compact on December 31, 2018.

Prescription monitoring. The bill would require the board to periodically check the Texas State Board of Pharmacy's Prescription Monitoring Program (PMP) to determine whether an APRN was engaging in potentially harmful prescribing patterns. The board, in coordination with

the Board of Pharmacy, would determine conduct that qualified as a potentially harmful prescribing pattern or practice. At a minimum, the board would have to consider the number of times an APRN prescribed opioids, benzodiazepines, barbiturates, or carisoprodol, and patterns of prescribing combinations of those drugs and other dangerous combinations of drugs identified by the board.

The bill also would require an APRN authorized to prescribe drugs to review a patient's prescription history in the PMP before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol. This provision would apply to a prescription issued on or after September 1, 2018.

Peer assistance program. The board could require in a declaratory order that a person begin participation in the Texas Peer Assistance Program for Nurses upon receipt of an initial nursing license. The bill would require the board by rule to develop a process for determining whether a person needed to continue participating in a peer assistance program. The BON would have to create and use customized requirements for the program that corresponded to individual nurses' needs and diagnoses.

Board training. The bill would revise training requirements for board members. The executive director of the board would be required to create and distribute annually copies of the board's training manual to each board member.

Repealed provisions. The bill would repeal the board's authority to develop pilot programs and its required submission of an annual report to the governor containing board proceedings.

Effective date. The bill would take effect September 1, 2017.

SUPPORTERS
SAY:

CSHB 2950 would protect and promote the welfare of Texans by ensuring that each person holding a nursing license in Texas was competent to practice safely.

Out-of-state nursing programs. The lack of long-term clinical experience and the below-average National Council Licensure Examination (NCLEX) exam passage rates suggest graduates from some

out-of-state nursing programs may not be as prepared to enter the nursing profession as nursing students who graduate from in-state programs that require traditional clinical learning experiences. Requiring out-of-state programs to take certain actions if they failed to meet exam passage rates as determined by the Texas Board of Nursing would ensure only qualified nurses received nursing licenses to practice in Texas.

Sanctions. The board sometimes reprimands nurses for conduct unrelated to their profession, often resulting in more severe sanctions than may be deemed necessary. A narrow and objective application of the board's criminal guidelines would ensure no disciplinary action was taken against a nurse whose conduct was not relevant to the practice of nursing.

Nurse Licensure Compact. Adopting the new Nurse Licensure Compact would increase nurses' mobility within the profession and improve consumer access to health care. Combining the compact with growing telehealth capabilities and distance education would help address nursing shortages, especially in rural areas.

Prescription monitoring. The board lacks clear statutory authority and legislative direction to proactively monitor licensees' prescribing patterns and investigate nurses who may engage in improper prescribing. Proactive monitoring would help curb prescription drug abuse.

Peer assistance program. The current structure of the Texas Peer Assistance Program for Nurses does not adequately meet the needs of nurses with substance abuse disorders and mental health issues. Removing stringent program length requirements would enable nurses to remain in the program for as long as necessary, depending on the severity of their disorder or previous treatment.

OPPONENTS
SAY:

Rather than requiring the Texas Board of Nursing to update its code of conduct rules, CSHB 2950 should transfer the board's authority to enforce disciplinary actions to the State Office of Administrative Hearings. This would minimize conflicts of interest, allow a neutral party to assess the merits of a nurse's unprofessional conduct as it pertains to the practice of nursing in disciplinary proceedings, and help to prevent application of conduct rules beyond that.

NOTES: A companion bill, SB 305 by Hinojosa, was referred to the Senate Committee on Health and Human Services on March 6.

SUBJECT: Redirecting gas utility taxes to the oil and gas regulation and cleanup fund

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 11 ayes — Darby, C. Anderson, G. Bonnen, Canales, Clardy, Guerra,
Isaac, P. King, Lambert, Landgraf, Schubert

0 nays

2 absent — Craddick, Walle

WITNESSES: For — (*Registered, but did not testify*: Adrian Acevedo, Anadarko Petroleum; Mark Harmon, Chesapeake Energy; Julie Williams, Chevron; Teddy Carter, Devon Energy; Christina Wisdom, Occidental Petroleum Corporation; Katherine Carmichael, Panhandle Producers and Royalty Owners Association; Ben Sebree, Permian Basin Petroleum Association; Mark Gipson, Pioneer Natural Resources; Bill Stevens, Texas Alliance of Energy Producers; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Stephen Minick, Texas Association of Business; Ed Longanecker, Texas Independent Producers and Royalty Owners Association; Laura Buchanan, Texas Land and Mineral Owners Association; Todd Staples, Texas Oil and Gas Association; Tricia Davis, Texas Royalty Council)

Against — None

On — Wei Wang, Railroad Commission; Lon Burnam; (*Registered, but did not testify*: Cyrus Reed, Lone Star Chapter Sierra Club; Carol Birch, Public Citizen Texas)

BACKGROUND: Natural Resources Code, sec. 81.067 governs the oil and gas regulation and cleanup fund. Sec. 81.068 allows the Railroad Commission of Texas (RRC) to use money in the fund for any purpose related to the regulation of oil and gas development, including oil and gas monitoring and inspections, well plugging, and other specified activities.

Utilities Code, ch. 122 governs the gas utility pipeline tax, which is a 0.5

percent tax on the gross income of natural gas utilities. This tax must be paid to the RRC but made payable to the comptroller. It is deposited into the general revenue fund.

DIGEST: CSHB 2715 would require gas utility pipeline taxes, as well as penalties for failure to report or pay and interest from delinquent taxes, to be deposited to the credit of the oil and gas regulation and cleanup fund. The tax, penalties, and interest would be deposited to the fund until September 1, 2029. The bill also would allow the oil and gas regulation and cleanup fund to be used for any purpose related to the regulation of the rates and services of gas utilities and the administration of surface mining regulatory programs.

The bill would take effect on September 1, 2017, and would prevail over other legislation passed by the 85th Legislature relating to nonsubstantive additions and corrections to enacted codes.

SUPPORTERS SAY: CSHB 2715 would deposit revenue raised by the Railroad Commission of Texas (RRC) through gas utility pipeline taxes, which is currently swept into general revenue, into the oil and gas regulation and cleanup fund. The RRC is primarily a fee-based agency, which is beneficial when the industry is doing well but is detrimental when the industry lulls. Since 2015, falling oil prices have curtailed fee revenue, causing the RRC to operate at a deficit of roughly 20 percent. Dedicating revenue from the gas utility pipeline tax to the oil and gas regulation and cleanup fund would provide certainty to the RRC and enable it to fully carry out its duties.

OPPONENTS SAY: The RRC would be better served by receiving an appropriation in the amount of the tax, rather than having the tax dedicated to the oil and gas regulation and cleanup fund. Dedicating the tax would not necessarily give the RRC more funds, but it would limit the Legislature's discretion over those funds in the future.

OTHER OPPONENTS SAY: CSHB 2715 would be a good first step, but more is required to achieve the right balance of funding. While it is clear that the RRC needs more funding, the Legislature should carefully review current permit fees, bonding levels, and fines assessed by the commission.

NOTES: According to the Legislative Budget Board's fiscal note, CSHB 2715 would have a negative impact of \$51.7 million dollars to general revenue and a positive impact of \$51.7 million dollars to the oil and gas regulation and cleanup fund through fiscal 2018-19.

SUBJECT: Creating an early childhood certification to teach pre-K through grade 3

COMMITTEE: Public Education — favorable, without amendment

VOTE: 8 ayes — Huberty, Bernal, Bohac, Dutton, Gooden, K. King, Koop,
VanDeaver

0 nays

3 absent — Allen, Deshotel, Meyer

WITNESSES: For — Larrisa Wilkinson, Prek4SA; Wendy Uptain, The Commit!
Partnership; Laura Laywell; Cody Summerville; (*Registered, but did not
testify*: Jason Sabo, Children at Risk; Chris Masey, Coalition of Texans
with Disabilities; Isaac Faz, Dallas County Community College District;
Melanie Rubin, Dallas Early Education Alliance; Derek Little, Dallas
ISD; Angela Farley, Dallas Regional Chamber; Priscilla Camacho, San
Antonio Chamber of Commerce; Lindsay Sobel, Teach Plus; Diane
Ewing, Texans Care for Children; Kimberly Kofron, Texas Association
for the Education of Young Children; Justin Yancy, Texas Business
Leadership Council; Kyle Ward, Texas PTA; Lee Nichols, TexProtects;
Margaret Johnson, The League of Women Voters of Texas; Cathy
McHorse, United Way for Greater Austin; Stephanie Mace, United Way
of Metropolitan Dallas; David Brown; Jerry Burkett; Thomas Parkinson)

Against — Zenobia Joseph; (*Registered, but did not testify*: Diann Andy,
Bexar County Democratic Women; Rose Benitez, Texas Association of
School Personnel Administrators)

On — Kate Kuhlmann, Association of Texas Professional Educators; Jodi
Duron, Texas Association of School Administrators, Texas Association of
Community Schools, and Texas Elementary and Principals Supervisors
Association; Ryan Franklin, Texas Education Agency; Karen Alexander;
(*Registered, but did not testify*: Lolly Guerra, Texas Association of School
Personnel Administrators; Kara Belew, Texas Education Agency)

BACKGROUND: Education Code, sec. 21.003(a), requires that a person employed as a

teacher in a public school district hold the appropriate teaching certificate. Under 19 TAC, part 7, §233.2, teachers who teach prekindergarten through grade 6 must hold an early childhood through grade 6 certificate.

DIGEST: HB 2039 would require the State Board for Educator Certification (SBEC) to create an early childhood certificate to specially train teachers on instruction in prekindergarten through grade 3. A person would not have to hold the certificate to teach prekindergarten through grade 3 in a school district.

The bill would set eligibility requirements for obtaining the early childhood certificate. A person would have to complete the course work for an early childhood certificate in an educator preparation program, including a knowledge and skills-based course of instruction on early childhood education that included teaching methods for using small group instructional formats and strategies for teaching fundamental academic skills, including reading, writing, and numeracy. Alternately, a person holding an early childhood through grade 6 certificate could complete the coursework described above.

To be eligible for a certificate, a person would be required to perform satisfactorily on an examination prescribed for this purpose by SBEC and satisfy any other board requirements. The board would develop criteria for the course of instruction for an early childhood certificate in consultation with college and university faculty members who taught education preparation programs.

SBEC would propose rules establishing requirements and prescribing an exam for early childhood certification, as well as standards governing the approval and renewal of educator preparation programs for that certification.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY: HB 2039 would create a teacher certification for early childhood, which is important because of the differences between instructing the state's

youngest students and those in grades 4 through 6. The current certification of early childhood through grade 6 (EC-6) is too broad, and due to standardized testing in later elementary grades, results in a focus on the later grades. Teachers with an EC-6 certification sometimes feel unprepared to meet the unique needs of early grades, and certification for EC-3 would provide the special training needed.

Prekindergarten and early elementary years are some of the most critical in a child's education, and the specialized focus provided by an EC-3 certificate would help prepare teachers for this. Being able to read proficiently by third grade is a significant factor in whether a student graduates from high school, and some researchers note that the EC-6 program does not always adequately cover areas such as reading methodology and child growth development, leaving many children unprepared as they leave grade 3.

Creating an EC-3 certification would incentivize colleges and universities to provide more focused coursework on early childhood and early elementary education, leading to a better prepared workforce.

The bill would provide flexibility and local control to school districts and elementary school teachers, who would not have to hold the EC-3 certificate to teach the grades it would cover. The bill simply would allow teachers to receive an optional certificate based on a desired specialization. Superintendents would maintain flexibility to staff schools.

Providing a certification would be preferable to an endorsement because a certification is connected to training and coursework, whereas an endorsement only requires passing a test. Endorsements also can be costly for teachers and would create a double-burden for early childhood teachers seeking one because they would have to obtain both the endorsement and an EC-6 certificate.

Many stakeholders, including teachers, principals, and parent-teacher associations already are in favor of an additional certificate for instruction of young children. This demonstrated need should be addressed now, rather than waiting two years for the state to further study the issue.

**OPPONENTS
SAY:**

HB 2039 could result in early childhood teachers who were unprepared if reassigned to teach in grades 4 through 6. When Texas previously offered an early childhood through grade 4 certification, it resulted in fewer teachers qualified to teach grades 5 and 6. As a result, some teachers were reassigned to teach grades outside their certification expertise and were unprepared to do so. Teachers who received an EC-3 certificate might become less marketable. When schools experience budget cuts, they are more likely to retain generalists than specialists able to teach only a certain number of grades.

Early childhood education training already is covered with the EC-6 certificate, and an additional certificate is unnecessary. If teachers wanted to gain a special credential for EC-3 education, a supplementary endorsement would be preferable. The creation of any new certification should wait until the completion of studies by TEA and the State Board for Educator Certification on whether an EC-3 certificate or endorsement should be considered.

SUBJECT: Altering regulations of motor fuel metering devices and fuel quality tests

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Kuempel, Guillen, Goldman, Hernandez, Herrero, S. Thompson
0 nays
3 absent — Frullo, Geren, Paddie

WITNESSES: For — Bo Sasnett, D&H United Fueling Solutions, Inc.; Phil Wuest, Pic-n-Pac Convenience Stores; Paul Hardin, Texas Food and Fuel Association; (*Registered, but did not testify*: Steve Fryar, PF&E Oil Company, Texas Food and Fuel Association; Dan Baker, Regal Oil, Inc., Texas Food and Fuel Association; Stephen Minick, Texas Association of Business; Kenneth Besserman, Texas Restaurant Association; Jim Sheer, Texas Retailers Association)

Against — None

On — (*Registered, but did not testify*: Philip Wright, Texas Department of Agriculture)

BACKGROUND: Under Agriculture Code, sec. 13.1011, an owner or operator of a commercial weighing or measuring device must register it with the Texas Department of Agriculture (TDA) and renew the registration annually. Sec. 13.101 makes owners and operators responsible for ensuring the devices are inspected by TDA at least once every four years. TDA also may, as necessary, implement risk-based inspections. It also may assess fees to recover costs of registration and inspection of these devices, according to sec. 13.1151. Under sec. 13.455, an individual performing maintenance on these devices must be a licensed service technician.

Motor fuel quality and testing is governed by Agriculture Code, ch. 17, subch. B-1. Sec. 17.072 allows TDA to collect samples and conduct testing at any location where motor fuel is kept or sold to verify

compliance with minimum fuel quality standards. Under sec. 17.073, if TDA has reason to believe the motor fuel does not meet minimum fuel quality standards or is being sold in an incorrect way, it may stop the sale of motor fuel and mark a device as out of order.

DIGEST: CSHB 2174 would establish requirements for the registration and inspection of motor fuel metering devices that were separate from those applicable to other commercial weighing and measuring devices.

Motor fuel metering devices would be registered similarly to other commercial weighing or measuring devices. The Texas Department of Agriculture (TDA) could assess a late fee not to exceed \$250 per year for premises that failed to register one or more devices before the end of the registration period because of a registration error.

The bill would require motor fuel metering devices to be inspected, tested, and calibrated at least once every two years by licensed service technicians operating under contract with the operator of the motor fuel metering device. These inspections would be required only if the device was:

- kept for sale, sold, or used by a proprietor, agent, lessee, or employee in proving the measure of motor fuel; or
- purchased, offered, or submitted by a proprietor, agent, lessee, or employee for sale, hire, or award.

TDA could not increase fees for registration and inspection of motor fuel metering devices by more than 5 percent of the amount of the fee at the end of the preceding state fiscal biennium.

Specifications and tolerances for motor fuel metering devices set by TDA would have to match those of the National Institute of Standards and Technology.

CSHB 2174 also would require sample collection and testing at a dealer's location to be conducted by a licensed service technician. When collecting, sampling, and handling fuel in preparation for laboratory analysis, a technician would have to follow the most recent applicable

ASTM International Standard procedures.

Before stopping the sale of motor fuel or marking a device as out of order, TDA would need to have laboratory results confirming that the motor fuel was in violation of minimum fuel quality standards.

The bill would take effect September 1, 2017.

**SUPPORTERS
SAY:**

CSHB 2174 would alleviate onerous inspection requirements for fuel dealers. The Texas Department of Agriculture (TDA) currently requires fuel dealers to have each meter recalibrated every two years by a third-party technician, in addition to having their devices inspected by the department every four years. The bill would require these devices to be inspected at least once every two years by TDA-licensed service technicians, who are capable of correcting any problem discovered during an inspection. TDA inspectors cannot correct discovered problems, making their inspections inefficient and leaving the pump inoperable. Inspection costs are high, so requiring both inspection by TDA and recalibration by third-party technicians is a substantial financial burden.

The bill also would place a 5 percent cap per biennium on fee increases for inspection and registration costs of motor fuel metering devices and would limit late fees to \$250 for a facility with errors in their registration. These provisions are necessary to address the recent significant fee increases implemented by TDA, which burden the industry.

While some have raised concerns that allowing licensed service technicians to draw fuel samples for quality testing could give way to sample tampering, TDA currently has a chain of custody procedure in place that still would be followed if the sample came from a technician. TDA still would receive the complaints and monitor complaint responses. Requiring confirmed poor fuel quality through laboratory results before shutting down a fuel pump would eliminate less reliable visual tests, ensure that a pump with good fuel was not unnecessarily shut down, and limit the amount of time the pump was inoperable.

**OPPONENTS
SAY:**

CSHB 2174 would remove TDA from the motor fuel sampling process, which could result in incorrect and untimely fuel samples.

Currently, if a customer complains about fuel quality, TDA draws a fuel sample for testing. Requiring that samples be drawn by licensed technicians could create situations where a technician was inspecting the his or her own company. Self-inspection could provide an opportunity to alter a sample or to be slow to respond to customer complaints.

The bill would require laboratory results of sampling before stopping sales and shutting down a pump, which could allow poor-quality motor fuel to be sold. On occasion, TDA pulls a motor fuel sample of sludge, at which time it may shut down the pump. Without this ability, the fuel could continue being sold until a lab result came back. Most labs will not test a fuel sample that cannot pass a visual test because it could ruin their test engines. Sending such a sample would waste their sample kit and their time.

NOTES:

A companion bill, SB 1744 by Nichols, was referred to the Senate Committee on Transportation on March 23.

SUBJECT: Increasing the penalty for killing another person's cow, bison, or horse

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 7 ayes — T. King, González, C. Anderson, Burrows, Cyrier, Rinaldi, Stucky

WITNESSES: For — Marvin Wills, Texas and Southwestern Cattle Raisers Association; (*Registered, but did not testify*: David Sinclair, Game Warden Peace Officers Association; Robert Turner, Independent Cattlemen's Association, Texas Sheep and Goat Raisers Association; Todd Kercheval, Livestock Marketing Association of Texas, Texas Conservation Association for Water and Soil; Marissa Patton, Texas Farm Bureau; Darren Turley)

Against — None

BACKGROUND: Penal Code, sec. 28.03 establishes that a person commits an offense if the person intentionally or knowingly damages or destroys another person's tangible property without the owner's consent. The punishment is determined based on the pecuniary loss to the owner.

DIGEST: CSHB 2817 would make the intentional killing of another person's cow, bison, or horse a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

The bill would provide an exception if the person who had killed the cow, bison, or horse had done so in the course of the person's regular agricultural labor duties and practices.

The bill would take effect September 1, 2017, and would apply only to an offense committed on or after that date.

SUPPORTERS SAY: CSHB 2817 would deter the wrongful killing of cattle, bison, and horses by making the punishment equal to that for stealing one of these animals. Currently, theft of cattle or horses is punishable by a third-degree felony, and it makes sense to punish both crimes equally because both deprive the

owners of their animals.

The bill also would bring the Texas Penal Code into line with the laws of other states by considering the killing of another person's cow, bison, or horse a felony regardless of pecuniary loss.

CSHB 2817 would provide an exception for cattle, bison, or horses killed in the course of an individual's agricultural work, which would protect individuals in this industry from wrongful conviction. The bill could be amended to address concerns that this exception may be too broad.

OPPONENTS
SAY:

CSHB 2817 would apply an overly broad exception to Penal Code, sec. 28.03(a)(1) and 28.03(a)(2), which would apply to every criminal mischief case of property damage or tampering filed, rather than just those dealing with the killing of a cow, bison, or horse. The bill's exception would require a prosecutor to disprove that the property in question was a cow, bison, or horse and that a cow, bison, or horse was not killed during agricultural duties. This could confuse juries and result in acquittal on a technicality if a prosecutor forgot to allege that the exception did not apply.

NOTES:

The author plans to offer a floor amendment that would make charges under Penal Code, sec. 28.03(a)(1) and sec. 28.03(a)(2) inapplicable to situations in which a head of cattle or bison or a horse was killed in the course of agricultural work.

A companion bill, SB 1204 by Perry, was referred to the Senate Agriculture, Water, and Rural Affairs Committee on March 9.

SUBJECT: Requiring freestanding ER facilities to disclose insurance network status

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul,
Sanford, Turner, Vo

0 nays

WITNESSES: For — Blake Hutson, AARP Texas; Tucker Anderson, Neighbors Health, the Texas Association of Freestanding Emergency Centers (TAFEC); Jamie Dudensing, Texas Association of Health Plans; (*Registered, but did not testify*: Patricia Kolodzey, Blue Cross Blue Shield; Stacey Pogue, Center for Public Policy Priorities; Reginald Smith, Communities for Recovery; Gyl Switzer, Mental Health America of Texas; Dan Chepkaukas, Patient Choice Coalition of Texas; Amanda Martin, Texas Association of Business; Bradford Shields, Texas Association of Freestanding Emergency Centers; Lee Manross, Texas Association of Health Underwriters; Steven Hays, Carolyn Parcels, and Clayton Stewart, Texas Medical Association; Kandice Sanaie, UnitedHealthcare; Charles Cowles; Lisa Ehrlich; Alice Jean; Theresa Tran)

Against — (*Registered, but did not testify*: Carrie Kroll, Texas Hospital Association)

On — John Hawkins, Texas Hospital Association; (*Registered, but did not testify*: Doug Danzeiser, Texas Department of Insurance)

BACKGROUND: Health and Safety Code, sec. 254.001 defines a "freestanding emergency medical care facility" as a facility structurally separate and distinct from a hospital that receives an individual and provides emergency care.

Sec. 254.155 require these facilities to post notice stating that:

- the facility is a freestanding emergency medical care facility;
- the facility charges rates comparable to a hospital emergency room and may charge a facility fee;

- the facility or a physician practicing at the facility may not be a participating provider in the patient's health benefit plan provider network; and
- a physician providing medical care at the facility may bill separately from the facility.

DIGEST: CSHB 3276 would require freestanding emergency medical care facilities to post notice listing the health benefit plans in which the facility was a participating provider in the plan's provider network or stating that the facility was not a participating provider in any network.

The bill would allow a facility to satisfy this notice requirement by giving notice on its website listing the health benefit plans in which the facility was a participating provider in the plan's provider network and providing to a patient written confirmation of whether the facility was a participating provider in the patient's health benefit plan provider network.

The bill would take effect September 1, 2017.

NOTES: The committee substitute differs from the filed bill in that CSHB 3276 would allow facilities to satisfy the notice requirements by listing online the benefit plans in which the facility was a participating provider in the plan's network and providing patients with written confirmation of whether the facility participated in the patient's health benefit plan provider network.

A companion bill, SB 2240 by L. Taylor, was reported favorably by the Senate Business and Commerce Committee on April 24.

SUBJECT: Allowing parents to name a designee for parent-taught driver education

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 8 ayes — Nevárez, Burns, Hinojosa, Holland, J. Johnson, Metcalf, Schaefer, Wray

0 nays

1 absent — P. King

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Brian Francis, Texas Department of Licensing and Regulation)

BACKGROUND: Education Code, sec. 1001.112 requires the Texas Commission of Licensing and Regulation to provide for approval of a parent-taught driver education course, which may be conducted by certain relatives and legal guardians.

Anyone conducting such a course must have:

- held a valid license for the preceding three years that had not been suspended, revoked, or forfeited for an offense involving a motor vehicle in the past three years;
- not been convicted of criminally negligent homicide or driving while intoxicated; and
- not more than five points assigned to their license at the time the course begins.

DIGEST: CSHB 3337 would allow a parent with a mental or physical impairment that substantially limits major life activities to designate someone to conduct a parent-taught driver education course for his or her child. The

designee would have to be at least 25 years old and meet the other requirements laid out by Education Code, sec. 1001.112.

The bill would take effect September 1, 2017.

**SUPPORTERS
SAY:**

CSHB 3337 would relieve burdens on parents with disabilities who may not be able to teach their teens how to drive. Current law unnecessarily requires the person conducting a driver education course under the parent-taught program to be a parent, step-parent, foster parent, legal guardian, grandparent, or step-grandparent. Many parents with disabilities therefore are forced to spend money on fees for a traditional driver education class. This bill would give them options to avoid such a burden.

The benefits of the parent-taught program could be realized by anyone close to the family. Most designees likely would be friends or relatives of the family who currently are not eligible, and that personal and emotional attachment to the new driver would create an incentive to provide a quality education. Possibly because of this incentive, historically there has been no difference in outcomes between the forms of driver education.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

CSHB 3337 differs from the bill as filed in that the committee substitute would define "disability" and require a designee to be at least 25 years old, instead of 18 years old as in the filed bill.

SUBJECT: Changing the drug reimbursement methodology for Medicaid and CHIP

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 24 ayes — Zerwas, Longoria, Ashby, G. Bonnen, Capriglione, Cospers, S. Davis, Dean, Giddings, Gonzales, González, Howard, Koop, Miller, Muñoz, Perez, Phelan, Raney, Roberts, J. Rodriguez, Sheffield, Simmons, VanDeaver, Walle

0 nays

3 absent — Dukes, Rose, Wu

WITNESSES: For — Kenneth Cattles, Duane Gallagher, and Tammy Gray, Texas Independent Pharmacies Association; (*Registered, but did not testify*: Edgar Walsh, Jeffrey Warnken, and Trena Weidmann, Texas Independent Pharmacies Association; Justin Hudman, Texas Pharmacy Association; Joseph Green, Travis County Commissioners Court; Gary Anderson)

Against — Laurie Vanhooose, Texas Association of Health Plans; (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings; Mindy Ellmer, Pharmaceutical Care Management Association; Amanda Martin, Texas Association of Business)

On — David Gonzales, Alliance of Independent Pharmacies of Texas; John Heal, Pharmacy Buying Association d/b/a Texas TrueCare Pharmacies; Jay Bueche, Texas Federation of Drug Stores; (*Registered, but did not testify*: Rachel Butler and Katherine Scheib, Health and Human Services Commission; John Chaddick, Texas Association of Community Health Plans; Bradford Shields, Texas Federation of Drug Stores)

DIGEST: HB 1133 would require a contract between a managed care organization (MCO) and the Health and Human Services Commission (HHSC) for health care services to contain a requirement that the MCO develop, implement, and maintain an outpatient pharmacy benefit plan that would comply with the reimbursement methodology for prescription drugs as

specified by the bill. The reimbursement methodology would apply to MCOs providing pharmacy benefits under the Children's Health Insurance Program (CHIP) and Texas Medicaid or a pharmacy benefit manager administering a pharmacy benefit program on behalf of the MCO. The Medicaid vendor drug program also would use the reimbursement methodology specified in the bill.

The reimbursement methodology in HB 1133 would require MCOs contracting with HHSC or a pharmacy benefit manager administering a pharmacy benefit program on behalf of the MCO to, at a minimum, reimburse prescription drugs at the lesser of the following two amounts:

- the average of Texas pharmacies' actual acquisition cost for the drug, plus a dispensing fee that was not less than a minimum amount adopted by rule by the executive commissioner; or
- the amount claimed by the pharmacy or pharmacist, including the gross amount due or the usual and customary charge to the public for the drug.

The methodology used to determine Texas pharmacies' actual acquisition cost would be consistent with the actual prices Texas pharmacies paid to acquire prescription drugs marketed or sold by a specific manufacturer and could be based on the National Average Drug Acquisition Cost published by the Centers for Medicare and Medicaid Services or another publication approved by the executive commissioner of HHSC. The dispensing fee would be based on Texas pharmacies' dispensing costs for prescription drugs.

The executive commissioner would develop a process for the periodic study of Texas pharmacies' actual acquisition cost for prescription drugs and would publish the study results on HHSC's website. HHSC also would study Texas pharmacies' dispensing costs for prescription drugs at least every five years, and the executive commissioner would have to consider amending the minimum dispensing fee based on the study results.

HB 1133 would require contracts between MCOs and HHSC to provide to a network pharmacy the sources used to determine the actual acquisition

cost pricing as well as a procedure for challenging a listed acquisition cost price for a drug. Denied challenges for each drug would be reported to HHSC. The contract under HB 1133 would require the MCO or pharmacy benefit manager to review and update drug reimbursement price information at least once every seven days to reflect any modification of the actual acquisition cost pricing or the factors used to determine that pricing. MCOs or pharmacy benefit managers would provide a process for network pharmacy providers to readily access drug reimbursement price lists.

If, before implementing any provision of HB 1133, a state agency determined that a waiver or authorization from a federal agency was necessary for implementation of that provision, the agency affected by the provision would request the waiver or authorization and could delay implementing that provision until the waiver or authorization was granted.

The bill would take effect March 1, 2018

**SUPPORTERS
SAY:**

HB 1133 would help ensure pharmacies received fairer reimbursement for Medicaid managed care prescriptions. Since prescription drug benefits were added to Medicaid managed care in 2012, the pharmacy benefit managers that administer pharmacy benefits for MCOs have routinely reimbursed pharmacies at below the acquisition cost for many drugs. Far from making a profit, many pharmacies do not receive even the cost of acquiring the drug when they fill a Medicaid or CHIP prescription under the current system.

HB 1133 would allow Medicaid managed care reimbursements for prescription drugs to be tied to a more steady and accurate pricing benchmark: the National Average Drug Acquisition Cost (NADAC). Allowing the use of the NADAC would improve transparency in prescription drug reimbursement rates and be fairer to pharmacies, patients, and taxpayers.

HHSC already has fixed these problems in the Medicaid fee-for-service system, but most Medicaid pharmacy services are provided under managed care, not fee-for-service. The bill also would help ensure that pharmacies could be reimbursed at more similar rates because the current

system allows different rates for pharmacies even on the same street. This negatively affects local, independent pharmacies.

The bill would have little if any fiscal impact to the state and would ensure that tax dollars were used responsibly for Medicaid pharmacy benefits. Using a different reimbursement methodology is not a mandate. The bill would not require the use of the NADAC and would allow the executive commissioner to use a different publication. The bill would not affect which drugs were covered by a Medicaid or CHIP plan, the generics or brand name medications covered by a plan, the formulary for these plans, or rebates. The bill simply would increase fairness for prescription drug benefits in MCO contracts.

**OPPONENTS
SAY:**

HB 1133 could result in a direct fiscal cost to the state by increasing the average reimbursement amount for Medicaid and CHIP drug claims. The existing reimbursement methodology is preferable to the proposed NADAC pricing system because the maximum available cost list is used by most states to determine Medicaid reimbursement rates, and this list is more representative of the actual cost to pharmacies of dispensing a prescription drug. The NADAC system, by contrast, could hold the state of Texas to reimbursing pharmacies at a higher cost because the NADAC price list does not reflect any discounts, rebates, or concessions that pharmacies may have received. The bill also could mandate Medicaid pricing and reduce private market competition because the rates for pharmacy reimbursement currently are negotiated separately for each contract.

NOTES:

The Legislative Budget Board's fiscal note states the fiscal implications of the bill cannot be determined at this time but that a significant cost is anticipated.

SUBJECT: Appropriations for miscellaneous claims and judgments against the state

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 22 ayes — Zerwas, Longoria, Ashby, G. Bonnen, Capriglione, Cosper, S. Davis, Dean, Giddings, Gonzales, González, Howard, Koop, Muñoz, Perez, Phelan, Raney, Roberts, J. Rodriguez, Simmons, VanDeaver, Walle

0 nays

4 absent — Dukes, Miller, Rose, Wu

1 present not voting — Sheffield

WITNESSES: For — Ed Heimlich

Against — None

On — Colin Brock, Legislative Budget Board; Amanda Cochran-McCall, Office of the Attorney General; (*Registered, but did not testify*: Dolores Fojtasek, Comptroller of Public Accounts; Michael Vanderburg, Legislative Budget Board)

BACKGROUND: For decades, each general appropriations act has contained a rider prohibiting the use of funds to pay any judgment or settlement against the state unless the funds are appropriated specifically for such purposes. The provisions are included in Art. 9, sec. 16.04 of the House-passed version of the fiscal 2018-19 general appropriations act.

DIGEST: HB 3765 would appropriate money from various accounts to pay outstanding claims and judgments against the state, which are listed individually. The bill would appropriate \$4.7 million from the general revenue fund; \$15.7 million from the state highway fund; \$776 from the game, fish, and water safety account; \$880 from the state parks account; \$8,449 from the hazardous and solid waste remediation fees account; and \$4,373 from the unemployment compensation clearance account. Each claim would have to be verified and approved by the comptroller and the

attorney general before it could be paid.

The bill would take effect September 1, 2017.

**SUPPORTERS
SAY:**

HB 3765 is the bill routinely filed each session to appropriate money to pay those who have been awarded a judgment against the state and various other unpaid claims and charges. In some cases, the Legislature must approve certain types of claims. Those who are legally entitled to these funds cannot receive them unless and until the Legislature appropriates the funds. Each claim would have to be verified and approved by the comptroller and attorney general before it could be paid.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

A companion bill, SB 2219 by Hinojosa, was referred to the Senate Finance Committee on March 29.

SUBJECT: Expanding certain home telemonitoring services

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Price, Sheffield, Burkett, Coleman, Cortez, Guerra, Klick, Oliverson, Zedler

0 nays

2 absent — Arévalo, Collier

WITNESSES: For — Edward Stonebraker, Coordination Centric; (*Registered, but did not testify*: Gregg Knaupe, Seton Healthcare Family; Amanda Martin, Texas Association of Business; Tim Schauer, Texas Association of Community Health Plans; Nora Belcher, Texas e-Health Alliance; Marilyn Doyle, Texas Medical Association; David White, Texas Psychological Association; Thomas Parkinson)

Against — None

On — Tamela Griffin, Health and Human Services Commission

BACKGROUND: Government Code, sec. 531.02164 requires the executive commissioner of the Health and Human Services Commission to establish a statewide program to allow reimbursement under Medicaid for home telemonitoring services if the commission determines that those services would be cost-effective and feasible. Home telemonitoring services are available only to a person diagnosed with certain conditions, including diabetes and hypertension.

DIGEST: CSHB 727 would require a home telemonitoring services program under Medicaid to provide reimbursement for services in the event of an unsuccessful data transmission if the provider attempted to communicate with the patient by telephone or in person to establish a successful data transmission. A provider thusly reimbursed could not also be reimbursed for communicating with the patient by telephone or in person while attempting to establish a successful data transmission.

The bill also would authorize the home telemonitoring program to provide services to pediatric patients with chronic or complex medical needs who:

- were being treated concurrently by at least three medical specialists;
- were diagnosed with end-stage solid organ disease;
- had received an organ transplant; or
- were diagnosed with severe asthma.

The Health and Human Services Commission would be required to adopt necessary rules to implement the provisions of this bill as soon as practicable.

The bill would take effect September 1, 2017.

**SUPPORTERS
SAY:**

CSHB 727 would allow certain pediatric patients to be eligible for the home telemonitoring program under Medicaid, expanding an important cost-saving program to more vulnerable populations. Currently, only certain conditions qualify, including diabetes and hypertension, which are less common in children. The bill would require the Health and Human Services Commission to adopt rules as soon as practicable, ensuring that the program moved along more quickly than it has in the past.

The bill would encourage providers to join the home telemonitoring program by allowing them to be reimbursed for an attempted communication that was unable to connect to a program member. Because of the steep regulations and costs of the program, providers currently are discouraged from joining. CSHB 727 would ensure that providers could reach out to members without incurring significant costs.

It is not likely that the program would be susceptible to fraud under this bill because only a low cost is incurred when a provider attempts to reach a member. The program is easy to audit because information is gathered electronically. The bill also would prohibit a provider from double dipping by seeking reimbursement twice for a missed connection.

OPPONENTS

CSHB 727 could leave the Health and Human Services Commission open

SAY: to fraud by reimbursing providers for attempted connections. A provider could claim to have reached out to a member of the home telemonitoring program and benefit from the reimbursement without incurring any costs.

SUBJECT: Creating a certificate of relief from collateral consequences

COMMITTEE: Corrections — committee substitute recommended

VOTE: 6 ayes — White, Allen, S. Davis, Romero, Sanford, Tinderholt
1 nay — Schaefer

WITNESSES: For — Joey Gidseg, Austin Justice Coalition; Annette Price, Austin/Travis County Reentry Roundtable; Kathryn Freeman, Christian Life Commission; Reginald Smith, Communities for Recovery; Isa Arizola, Goodwill Central Texas; Charleston White, Hyped about HYPE Youth Outreach; Darwin Hamilton, Reentry Advocacy Project; Brittany Hopkins, Texas Criminal Justice Coalition; Yannis Banks, Texas NAACP; (*Registered, but did not testify*: Nicholas Hudson, American Civil Liberties Union of Texas; Gyl Switzer, Mental Health America of Texas; Greg Hansch, National Alliance on Mental Illness (NAMI) Texas; Deece Eckstein, Travis County Commissioners Court; Ellen Arnold, TX Association of Goodwills; Shane Johnson; Lauren Oertel; Gary Wardian)

Against — None

On — Rodney Thompson, Texas Probation Association; (*Registered, but did not testify*: Carey Welebob, Texas Department of Criminal Justice)

DIGEST: CSHB 1426 would create a certificate of relief from collateral consequences for certain individuals. "Collateral consequences" would mean the revocation, suspension, or denial of an occupational license as an indirect consequence of criminal history record information. Defendants would become eligible once they had successfully completed:

- a term of deferred adjudication community supervision and the judge had dismissed the proceedings and discharged the person; or
- a term of community supervision and the person's conviction was set aside.

The certificate would state that the defendant had successfully completed

a term of community supervision as well as all requirements imposed by the court and had been relieved of all penalties, disabilities, or disqualifications resulting from the offense. The bill would require courts to issue certificates to defendants no later than 30 days after they became eligible.

The bill would prohibit licensing boards from denying a license because of an offense for which an applicant with a certificate was otherwise eligible. This provision would not apply to licenses required for health professionals, financial or legal services, law enforcement, or the security industry. The certificate also would not overcome other law prohibiting a license from being granted to a person convicted of or placed on deferred adjudication community supervision for a specific offense. The bill would not prohibit a licensing board from restricting a person to a provisional or probationary license.

If a licensing authority found that the applicant had committed a class A misdemeanor offense or higher after the certificate was issued, the certificate would be nullified.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply to a person who completed a term of community supervision before, on, or after that date.

**SUPPORTERS
SAY:**

CSHB 1426 would allow those who already had demonstrated a commitment to rehabilitation to use their skills to make a better living for themselves and their families and contribute to society. Many offenders are placed on deferred adjudication to overcome addiction or mental health issues. Once individuals in those situations have completed their services plans successfully, they are well on the path to recovery. Gainful employment can discourage people from further criminal conduct and allow for continued growth at home and in their communities.

Licensing agencies still could consider each application on its merits. The bill only would prevent denying an application because of an offense for which the individual had a certificate of relief from collateral consequences. If there were other concerns about a candidate, nothing

about the bill would keep the agency from denying or restricting a license.

**OPPONENTS
SAY:**

CSHB 1426 would prevent licensing agencies, which have been entrusted with protecting the public, from using their best judgment. Licensing agencies should be able to consider any criminal history, especially if it has some bearing on the defendant's intended occupation.

SUBJECT: Accessing records for hearing aid testing, fitting, and dispensing

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Price, Sheffield, Burkett, Coleman, Cortez, Guerra, Klick, Oliverson, Zedler

0 nays

2 absent — Arévalo, Collier

WITNESSES: For — Patsy Knight

Against — None

On — Scott Pospisil, Texas Hearing Aid Association; (*Registered, but did not testify*: Brian Francis, Texas Department of Licensing and Regulation)

BACKGROUND: The federal Health Insurance Portability and Accountability Act (HIPAA) and the Texas Medical Records Privacy Act under Health and Safety Code, ch. 181 require that health care providers respond to requests for records from their clients pertaining to personal medical information and fulfill these requests in a timely manner.

Concerns have been raised that records kept by hearing instrument providers are treated as business records, not medical records, and thus are not applicable to provisions in HIPAA or other state requirements.

DIGEST: CSHB 1543 would entitle the client of a person licensed to fit and dispense hearing instruments or of a hearing instrument fitting and dispensing practice to make a signed request in writing to receive a copy of the client's records that relate to the testing for and the fitting and dispensing of the client's hearing instruments.

The bill would take effect September 1, 2017.

- SUBJECT:** Exempting certain commercial motor vehicles from state inspection
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 13 ayes — Morrison, Martinez, Burkett, Y. Davis, Goldman, Israel, Minjarez, Phillips, Pickett, Simmons, E. Thompson, S. Thompson, Wray
- 0 nays
- WITNESSES:** For — John Esparza, Texas Trucking Association; Alan Riddick, TNT Crane and Rigging; (*Registered, but did not testify*: Greg Macksood, Anheuser-Busch; Dan Hinkle, Association of Energy Service Companies; Randy Teakell, AT&T; Robert Turner, Earthmoving Contractors Association of Texas; Martin Hubert, Sysco Corporation; Ronald Hufford, Texas Forestry Association; Michael Nowels, Texas State Inspection Association; Laird Doran, The Friedkin Group, U.S. AutoLogistics)
- Against — None
- On — (*Registered, but did not testify*: Jimmy Archer, Texas Department of Motor Vehicles; James Bass, Texas Department of Transportation; Pablo Luna and Chris Nordloh, Texas Department of Public Safety)
- BACKGROUND:** Transportation Code, sec. 548.201 requires a commercial motor vehicle registered in Texas to meet Texas inspection standards. Sec. 502.091 allows the Texas Department of Motor Vehicles to enter into an agreement with another state to register the vehicles of Texas residents.
- 37 TAC, part 1, chap. 4, subch. C, sec. 4.37 recognizes Washington, D.C. and 19 other states as having inspection programs that meet federal standards equivalent to those required for a Texas-registered commercial vehicle.
- DIGEST:** CSHB 1793 would exempt a commercial motor vehicle from state inspection requirements if the vehicle:
- was not domiciled in Texas;

- was registered in Texas or under the International Registration Plan; and
- had been issued a certificate of inspection in compliance with federal motor carrier safety regulations.

A vehicle exempted from state inspection requirements still would be required to pay any fees that would apply if the vehicle were subject to the inspection requirements, including a \$50 commercial motor vehicle inspection fee and a \$10 Texas emission reduction plan fee.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

**SUPPORTERS
SAY:**

CSHB 1793 would allow Texas-based companies with trucks primarily located in other states to be exempt from Texas inspection requirements, removing a burden that has imposed a heavy cost on Texas companies. To comply with current law, companies with trucks stationed in many other states must have those trucks driven from all over the country back to Texas, resulting in significant lost time and revenue, as well as fuel, labor, and maintenance costs. While some other states have inspection programs that meet Texas standards, many are located thousands of miles away and do not offer a practical alternative for commercial vehicles domiciled in Oklahoma or Louisiana, for example.

Without this bill, many companies may decide to move their headquarters to other states that do not require state inspections, which would hurt the Texas economy. Many companies want to remain in Texas but the cost of returning trucks each year for inspection is becoming too great.

The bill would not lower safety standards. Trucks still would have to receive inspections that comply with Federal Motor Carrier Safety regulations, which apply in all states. Commercial vehicles inspected in other states still would pay Texas fees, so the bill would not result in a cost to the state.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES: The committee substitute differs from the bill as filed in that CSHB 1793 would require commercial vehicles that were not inspected in Texas to pay any fees that would apply if the vehicle had been inspected here.

A companion bill, SB 1093 by Hancock, was reported favorably as substituted by the Senate Transportation Committee on April 3.

SUBJECT: Expanding the applicability of agricultural liens

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 6 ayes — T. King, González, C. Anderson, Cyrier, Rinaldi, Stucky
0 nays
1 absent — Burrows

WITNESSES: For — Marc Adams, CoBank; Kody Bessent, Plains Cotton Growers, Inc.; Ben Wible, Texas Farm Bureau; (*Registered, but did not testify:* Gary Holcomb, Ag Producers Coop; Mark Howard, Corn Producers Of Texas; Kara Mayfield, Farm Credit Bank of Texas; Stephen Scurlock, Independent Bankers Association of Texas; Marc Adams and Tommy Engelke, Texas Agricultural Cooperative Council; Dee Vaughan, Texas Grain Producers Indemnity Board; Patrick Wade, Texas Grain Sorghum Association; Steelee Fischbacher, Texas Wheat Producers Association)

Against — Tara Artho, Texas Grain and Feed Association; Ronnie Felderhoff

On — (*Registered, but did not testify:* Mike Mann, Texas Department of Agriculture)

BACKGROUND: Property Code, ch. 70, subch. E governs the creation and applicability of agricultural liens. Agricultural producers contracting with a purchaser to sell crops automatically have a lien against the crop for the amount of money owed to the producer under the contract. The lien attaches on the date of delivery, or first delivery if multiple deliveries occur.

The lien is automatically perfected for a period of 90 days after the date of delivery, or last delivery if multiple deliveries have occurred. For perfection to continue, the producer must file a financing statement with the secretary of state. When perfected, these liens have priority over conflicting security interests in or liens on the crop or proceeds created by the contract purchaser in favor of a third party, regardless of the date of

attachment.

An agricultural lien expires on the first anniversary of the date of attachment or is discharged when the lienholder receives full payment for the crop or voluntarily defers payment. Any contract provision between the producer and purchaser waiving the producer's right to seek a remedy provided by this subchapter is void.

Some observers suggest agricultural producers should be able to obtain a superior lien on their own crops, which would protect farmers with crops stored in a warehouse that goes into bankruptcy from going unpaid because other creditors have rights to those crops.

DIGEST:

CSHB 3063 would provide agricultural liens to producers who deliver or transfer their crops to a warehouse. The lien against that crop would be for its market value on the date of delivery, or first delivery if multiple deliveries occurred. These liens would have the same attachment, expiration, and perfection rules as other agricultural liens.

If an open storage crop was commingled with a company-owned crop by a warehouse or contract purchaser, the lien would apply only to the portion of the crop possessed by the warehouse or contract purchaser in an amount equal to the amount that was transferred or delivered by the producer.

Agricultural liens, even if perfected, would not necessarily have priority over conflicting security interests in or liens on crops or proceeds created under a marketing contract.

To the extent of any conflict, Property Code, subch. E would control over any other law, and would not abridge any other protections afforded to producers by other applicable laws. Subch. E would not affect:

- the validity or priority of a security interest or lien created and perfected to secure a loan directly to a producer or to a warehouse or a contract purchaser on a company-owned crop in favor of a secured lender;
- the validity or priority of a cotton ginner's lien; or

- the rights of a holder of a negotiable warehouse receipt.

This bill would take effect September 1, 2017, and would apply only to an agricultural producer who delivered or transferred an agriculture crop grown, produced, or harvested by the producer to a warehouse or a contract purchaser on or after the effective date of this bill.

SUBJECT: Accessing records involved in hearing aid complaints

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Price, Sheffield, Burkett, Coleman, Cortez, Guerra, Klick,
Oliverson, Zedler

0 nays

2 absent — Arévalo, Collier

WITNESSES: For — Patsy Knight

Against — None

On — (*Registered, but did not testify*: Brian Francis, Texas Department of
Licensing and Regulation)

BACKGROUND: The Texas Department of Licensing and Regulation (TDLR) is the state entity responsible for receiving, investigating, and enforcing complaints made against licensed providers of hearing instruments under Occupations Code, ch. 402. Under sec. 402.154, the department is authorized to release information and materials to an individual who is involved in a complaint against a licensed provider of hearing instruments. Some observers express concern that access by clients to these medical records in some cases may not be assured.

DIGEST: HB 1544 would require the Texas Department of Licensing and Regulation (TDLR), at the request of a client of a licensed hearing instruments provider, to give the client a copy of the provider's records relating to the client obtained by TDLR in connection with a complaint filed by the client and investigation against the license holder.

The bill would take effect September 1, 2017.